



**ALLIANCE
FOR
COMMUNITY
MEDIA**

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December 13, 2006

Ex Parte

Ms. Marilyn Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch,

This letter is to record the topics discussed in meetings with Commission staff on December 13, 2006. Face-to-face meetings were held with staff from offices of Commissioners Adelstein, MacDowell and Copps. The attached comments letter for the meeting was dropped off in the offices of Chairman Martin and Commissioner Tate.

In addition to discussing the comments in the attached letter, the following items were discussed:

Net Neutrality The PEG Access community is forced to take an interest in strong net neutrality enforcement. This is made necessary by the suggestion that, in the proposed IPTV or similar environment, Access operations would have responsibility for delivering our signals to the new entrant using internet resources purchased from the provider. Further, the to-the-home delivery system also makes use of the internet. Our small, generally under-funded operations would be subject to the prohibitive fees charged for the high-speed, priority video carriage necessary in the operation of a television channel. The provider would have two motivations for charging the highest fees possible:

- To increase profit; and
- To regain the bandwidth abandoned by PEG operations unable to meet the costs of transmission.



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Only Net Neutrality provisions can prevent this scenario in the absence of clear transmission requirements of video providers with regard to PEG.

Parity We discussed the need for parity between the new entrant and incumbent providers. It is clear that the incumbent will demand to compete on equal terms with the new entrant and will seek to abrogate any agreements which place them

at a competitive disadvantage. If the requirements of the new entrant are lower than those of the incumbent, we will initiate a race to the bottom with regard to public obligations. This could affect issues of PEG channel capacity and support, the ability of PEG and I-Net to serve the entire community, transmission of PEG signals to the video providers and more.

Pre-Emption of Democratic Process Special emphasis was placed on the need to honor the legislative process of the past year. We also expressed the belief that the questionable legal authority supporting some proposed rules would lead to substantial and unnecessary legal costs for public interest organizations, governmental offices and the private sector.

We appreciate the time given us by the Commission officers and remain available to provide any further information or clarification needed in your deliberation process.

Sincerely,

Anthony Riddle
Executive Director



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December 13, 2006

Mr. Kevin J. Martin
Chairman
Federal Communications
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445 12th Street, S.W.
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Mr. Jonathan S. Adelstein,
Commissioner
Federal Communications
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445 12th Street, S.W.
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Mr. Michael J. Copps
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Commission
445 12th Street, S.W.
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Mr. Robert M. MacDowell
Federal Communications Commission
445 12th Street, S.W.
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Ms. Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Chairman and Commissioners,

On behalf of the more than 3000 Public, Education and Government Access (PEG) channels nationwide, the 250,000 community organizations we serve, the 1.2 million volunteers who make it work, and the *tens of millions* of viewers who benefit and enjoy their offerings, the Alliance for Community Media calls on the FCC to promote competition only while preserving the treasure of local, community controlled media.

The Alliance supports completely the fundamentals presented by NATOA in its ex parte filing on behalf of NLC, NACo, USCM, ACM and ACD on December 12, 2006, two of which fundamentals may be summarized as follows:

- The proposal lacks clear legal authority and will result in litigation.
- The deadline structure for franchise negotiations will likely result in bad faith negotiations and may be followed by potentially dangerous use of public rights-of-way without local oversight.



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The purpose of our meeting today is to emphasize several matters of extreme concern to the national Access community.

Geographic Discrimination The proposed rule lacks a remedy for geographic discrimination. Our local communities use PEG facilities every day as a means of

engaging our citizens in the democratic process. PEG provides access to city services, educational resources and job training. Democratic participation in PEG activities should be for all and should be not based on any company's business plan. The public-right-of-way is owned by all in our community, not just those in an area lucky enough to be served. We believe that inevitable market imbalances must be anticipated by the FCC, as they were by Congress, and that any rule-making must provide these three elements:

- A) A standard for identifying imbalances in service.
- B) A party responsible for identifying the imbalance—logically, the municipality.
- C) A means for prevention or remedy of the imbalance if it occurs

Reduction of PEG Support The proposed rule reduces the support for PEG or other community media services from what is allowed by current Federal law. This is a somewhat arbitrary reduction which will hurt our communities. It is even in direct contradiction to language *authored by telephone companies* and already passed in key states such as California and Texas.

Attached to this letter is a chart which shows the *disastrous* effect this reduction would have on PEG facilities around the country. Many facilities would be completely wiped out. This is made doubly destructive by the lumping together of PEG, I-Net and other communications services into a single category with the video provider left to determine their market value as a deduction from franchise fees.

Furthermore, history shows that reduced PEG support has had no demonstrable effect on either subscriber price or level of competition in municipalities where it has occurred. Subscription rates are not tied to incremental program costs, *but to the maximum amount a customer is willing to pay for cable.*

These reductions would disrupt and destroy a valued community resource with no positive effect on either competition or rates.

PEG Channels and New Providers It is essential that new video entrants be required to provide channels for PEG. We understand that such a requirement may not be included in this rule-making. This would be a mistake that would hurt democratic public dialogue. It would create an advantage for new entrants over existing providers who have such an obligation. It would do nothing to encourage more robust roll-out of

bandwidth or of technologies which make more efficient use of exiting facilities.

Our Noisy Democracy For the past several years, we have all been engaged in a powerful political process at both Federal and State levels in order to determine where we as a people—both business and citizenry—ought to go in the next decade of technical change. It has been exhausting for all: proposals and counter-proposals, organizing and advertising, pleading, demanding and negotiating. But it has also been exhilarating.

As you survey this country from the heights of the Commission, you should be deeply moved by the way that your country has taken up these issues of communications—issues which, at one time, would have been beyond the gaze of average citizens are now recognized by millions as vital to our national character.

We hope that the Commission will recognize this noble process of community decision-making and allow it to find completion in the venue which was intended for it by the framers of the Constitution—*in the Legislature, to be decided by representatives elected by and directly accountable to the people of the United States.*

We look forward to working with the FCC to determine a community franchising process which supports both competition and community fairness. Please feel free to contact us if you have questions or comments.

Sincerely,

Anthony T. Riddle
Executive Director
Alliance for Community Media

CC: Christina Pauze
Chris Robbins
Heather Dixon
Rudy Brioche
Bruce Gottlieb

Annual PEG Support Funding From Cable Companies

| MINNESOTA Franchise Area | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If 05-311 Allowed 1% of gross revenues | PEG Annual Funding Loss under 05-311 |
|--|--|--|--|
| St. Paul Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, Shoreview, St. Anthony | \$1,437,000 (\$761,000 for operations, \$676,000 for equipment) \$1,046,023 (\$951,629 operating grant, \$94,394 equipment grant) | \$361,000 \$218,022 | \$1,076,000 (75%) \$828,001 (79%) |
| Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, Maplewood, North Saint Paul, Oakdale, Vadnais Heights, White Bear Lake, White Bear Township, Willernie | | \$222,000 | \$589,000 (73%) |
| Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes, Spring Lake Park | | \$139,188 | \$452,002 (76%) |
| Eagan, Burnsville Andover, Anoka, Champlin, Ramsey | \$647,982 (for operations and equipment) \$357,000 (\$311,000 for operations, \$46,000 for equipment) | \$225,237 \$125,506 | \$422,745 (65%) \$231,494 (65%) |

* In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.

Annual PEG Support Funding From Cable Companies

| MINNESOTA Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
|---|---|---|--|---|
| Brooklyn Center, Brooklyn Park, Crystal, Golden Valley, Maple Grove, New Hope, Osseo, Plymouth, Robbinsdale | \$716,266 (for operations and equipment) | \$500,000 | | \$216,266 (30%) |
| Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, West St. Paul | \$293,000 (\$235,000 for operations, \$58,000 for equipment) | \$135,000 | | \$158,000 (54%) |
| Cities of Stillwater, Oak Park Heights, Bayport, and the Townships of Baytown and Stillwater | \$109,000 (for operations and equipment) | \$38,300 | | \$70,700 (65%) |
| MARYLAND Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Montgomery County | \$3,703,519 (\$2,013,993 for PEG operations plus \$236,100 for PEG capital plus \$1,453,426 for I-Net operations) | \$1,787,200 | | \$1,916,319 (52%) |
| WASHINGTON, DC Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Washington, DC | \$2,160,000 | \$1,080,000 | | \$1,080,000 (50%) |

- * In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.

Annual PEG Support Funding From Cable Companies

| MASSACHUSETTS Franchise Area | Current PEG Annual Funding¹ (excluding state law-mandated franchise fee of \$1.20/sub/year to State and LFA)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
|---|---|---|--|
| Barnstable, Yarmouth, Chatham, Dennis, Harwich | \$1,714,482 (\$1,663,982 [4.5% of gross revenues] plus allocation of \$505,000 in initial grants) | \$369,774 | \$1,344,708 (78%) |
| Cambridge | \$1,215,148 (\$965,148 in 2005, plus \$150,000/yr. grant, plus allocation of \$1,000,000 capital grant) | \$193,030 | \$1,022,118 (84%) |
| Newton | \$974,502 (\$833,502 [4% of gross revenues], plus \$80,000/year in other grants, plus allocation of \$610,000 in initial grants) | \$208,375 | \$766,127 (79%) |
| Worcester | \$985,000 (\$900,000 [3% of gross revenues] plus allocation of \$850,000 in initial grants) | \$300,000 | \$685,000 (70%) |
| Billerica | \$594,721 (\$539,721 [5% of gross revenues] plus \$55,000/year in capital grants) | \$107,944 | \$486,777 (82%) |
| New Bedford | \$591,098 (3% of gross revenues) | \$197,033 | \$394,065 (67%) |
| Malden | \$457,500 (\$400,000 in 2005 plus allocation of \$575,000 initial capital grant) | \$96,970 | \$360,530 (79%) |
| Plymouth-Kingston | \$443,050 (\$410,000 [3% of gross revenues] plus allocation of \$330,500 in initial grants) | \$136,667 | \$306,383 (69%) |
| Nonwood | \$335,000 (\$305,000 [5% of gross revenues] plus allocation of \$300,000 in initial grants) | \$61,000 | \$274,000 (82%) |
| Fall River | \$385,000 (2% of gross revenues) | \$192,500 | \$192,500 (50%) |
| Holliston | \$131,998 (\$106,998 [5% of gross revenues] plus \$25,000/year in other grants) | \$21,400 | \$110,598 (84%) |
| Carver | \$82,300 (\$74,000 [3% of gross revenues] plus allocation of \$83,000 in initial grants) | \$24,667 | \$57,633 (70%) |

¹ Massachusetts State law currently provides that any funding above the state mandated fees be spent on communications operations including PEG, I-Net and others. This chart anticipates state law changing to allow franchise fees to be used for other purposes

* In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.

Annual PEG Support Funding From Cable Companies

| OREGON Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
|----------------------------|---|---|--|---|
| Portland | \$3,000,000 (3% of gross revenues) | | \$1,000,000 | \$2,000,000 (67%) |
| Multnomah County | \$561,000 (3% of gross revenues) | | \$187,000 | \$374,000 (67%) |
| Salem | \$400,000 (1.5% of gross revenues) | | \$265,000 | \$135,000 (34%) |
| McMinnville | \$73,297 (\$1.00 per subscriber per month) | | \$43,215 | \$30,082 (41%) |
| VIRGINIA Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Fairfax County | \$4,500,000 (3% of gross revenues) | | \$1,500,000 | \$3,000,000 (67%) |
| Arlington County | \$1,439,000 (\$855,000/year; plus \$584,000 in 2005 -- 1% of gross revenues) | | \$591,500 | \$847,500 (59%) |
| ARIZONA Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Tucson | \$1,500,000 (\$1.35 per subscriber per month) | | \$700,000 | \$800,000 (53%) |
| MICHIGAN Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Bloomfield Township | \$313,243 (3% of gross revenues plus \$33,500 annual grant) | | \$97,910 | \$215,333 (69%) |

- * In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.

Annual PEG Support Funding From Cable Companies

| CALIFORNIA Franchise Area | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
|--|---|---|---|
| Santa Maria & Lompoc | \$464,000 (\$395,000 in 2005; plus allocation of \$69,000/year, from \$828,000 initial grant) | \$142,200 | \$321,800 (69%) |
| Glendale | \$613,333 (\$600,000 in 2005; plus allocation of \$13,333/year, from \$200,000 initial grant) | \$300,000 | \$313,333 (51%) |
| Ventura | \$350,292 (\$263,625 in 2005; plus allocation of \$86,667/year from \$1,040,000 in Yrs. 1-3 grants) | \$146,050 | \$204,242 (58%) |
| Gilroy, Hollister, San Juan Bautista | \$259,471 (\$189,471 in 2005; plus allocation of \$70,000/year, from \$700,000 initial grant) | \$63,157 | \$196,314 (76%) |
| Monterey | \$231,622 (\$151,622 in 2005; plus allocation of \$80,000/year, from \$800,000 initial grant) | \$68,571 | \$163,051 (70%) |
| Palo Alto, East Palo Alto, Menlo Park, Atherton | \$304,295 (88 cents per subscriber per month) | \$163,902 | \$140,393 (46%) |
| Humboldt County, Eureka, Arcata, Fortuna, Ferndale, Blue Lake, Rio Dell | \$293,750 (\$200,000/year; plus allocation of \$93,750/year, from \$750,000 in Yrs. 1-2 grants) | \$180,000 | \$113,750 (39%) |
| Oceanside | \$487,333 (\$214,000 in 2005; plus allocation of \$273,333/year from \$4,100,000 in Yrs. 1-3 grants) | \$389,538 | \$97,795 (20%) |
| Santa Rosa | \$316,667 (\$150,000/year; plus allocation of \$166,667/year, from \$2,500,000 in other grants during franchise term) | \$260,000 | \$56,667 (18%) |
| Monrovia | \$83,000 (\$46,000 plus 1% of gross revenues) | \$37,000 | \$46,000 (55%) |
| Lawndale | \$60,000 (2% of gross revenues) | \$30,000 | \$30,000 (50%) |

* In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.

Annual PEG Support Funding From Cable Companies

| OHIO Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
|---|---|---|--|---|
| Cincinnati | \$756,000 (\$0.96 per subscriber per month) | \$497,956 | | \$258,044 (34%) |
| Forest Park, Greenvilles, Springfield Township | \$161,665 (\$1.06 per subscriber per month) | \$118,682 | | \$42,983 (27%) |
| WISCONSIN Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| West Allis | \$200,000 (annual grant) | \$104,400 | | \$95,600 (48%) |
| River Falls | \$44,500 (\$1.32 per subscriber per month) | \$15,790 | | \$28,710 (65%) |
| Madison | \$388,000 (\$0.60 per subscriber per month) | \$360,000 | | \$28,000 (7%) |
| ILLINOIS Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Urbana | \$162,536 (2% of gross revenues) | \$81,268 | | \$81,268 (50%) |
| KANSAS Franchise Area | | Current PEG Annual Funding (excluding franchise fees)* | PEG Annual Funding If MB 05-311 Allowed 1% of Gross Revenues | PEG Annual Funding Loss If MB 05-311 Allowed 1% of Gross Revenues |
| Salina | \$135,000 (70 cents per subscriber per month) | \$95,549 | | \$39,451 (29%) |

* In addition to the annual PEG support funding described in this chart, other PEG and in-kind services resources are often provided by cable companies that serve these communities, including connections for program origination from multiple locations, free cable modem service, promotional assistance (e.g., ad avails, program listings on TV Guide channel, annual bill-stuffers), Institutional Networks, etc.